IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,
Appellant,

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and

CURTIS HOLT, SR, et al. and
CRUSADE FOR VOTERS OF RICHMOND, et al,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA

MOTION TO DISMISS OR AFFIRM

W.H.C. VENABLE
JOHN M. McCARTHY
Venable and McCarthy
Attorneys at Law
Caskie House
422 East Main Street
Richmond, Virginia

Attorneys for Appellees
Curtis Holt Sr., et al.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now the plaintiff, Curtis Holt, Sr., and moves the Court to allow him to proceed in Forma Pauperis with his complaint without the necessity of fees, costs, or giving security therefore pursuant to 28 U.S.C. § 1915, and further ask that W.H.C. Venable, Caskie House, 422 East Main Street , Richmond, Virginia, be appointed to represent me as having prior knowledge of my complaint and having represented me prior in related litigation.

CURTIS HOLT, SR.

CURTIS HOLT, SR.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Curtis Holt, Sr., being first duly sworn, depose and say that in support of my motion to proceed without prepayment of fees and costs therefore, I state that because of my poverty I am unable to pay the fees, costs or give security therefore of said proceedings; I believe I am entitled to the redress I seek; and I further swear the responses which I have made to the questions and instruction below relating to my ability to pay are true.

Q. Are you presently employed?

A. No. The date of my last employment was December 1954 for albemarle paper company at an average wage of 365.50 per month.

Q. Have you received in the past 12 months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

A. I have received payments for disability on Social Security averaging 208.00 per month. Additionally I have received 150.00 total for service to the Richmond Model Neighborhood Program.

Q. Do you own any cash, checking or savings accounts?

A. No.

Q. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property?

A. I am paying for a 1970 Ford Fairlane on which I owe approximately 2,200.00 and don't own anything else of value.

Q. List the names of your dependants.

A. Alto Mae Holt-wife; Curtis Holt, Jr.-child; Constance Denise Holt-child; Sir Walter Valentino Holt-child.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

CURTIS HOLT, SR.

CURTIS HOLT, SR.

Subscribed and sworn to before me this 4th day of October, 1974.

Notary Public

My commission expires: 4/5/78

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UNITED STATES OF AMERICA AND

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CRUSADE FOR VOTERS OF RICHMOND, ET AL. — Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO DISMISS OR AFFIRM

Curtis Holt, Sr., et al, move pursuant to Supreme Court Rule 16 (1) (a) and (c), that this appeal be dismissed or, in the alternative, that the judgment of the District Court in this case be affirmed.

OPINION BELOW

The order and opinion of the District Court below are attached to Appellant's "Jurisdictional Statement" as Appendices A & B thereof. Also attached thereto are the Findings of Fact and Conclusions of law of the Special Master as Appendix C.

JURISDICTION

The Order of the District Court was entered on June 6, 1974, in accordance with its opinion dated May 29, 1974. A Notice of Appeal was filed on July 15, 1974. The jurisdiction of this Court was invoked under 28 U.S.C. 1253.

QUESTION PRESENTED

Whether the District Court properly found that Appellant had failed to demonstrate satisfactorily in its declaratory judgment suit under §5 of the Voting Rights Act (42 U.S.C. 1973C) that the compromised annexation (even as modified) of a county adjacent to the City of Richmond did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.

STATEMENT

The relevant facts are recounted in the opinion of the District Court (J.S. App. 9b-38b) and the Findings of Fact of its specially appointed master (J.S.App. 1c-12c).

It suffices to add here that an examination of the Master's and the lower Court's findings of fact as compared to Appellant's suggested statement of the case reveals the self serving nature of the entire jurisdictional statement. Appellant even refers by footnotes to evidence not in the record nor anywhere corroborated.

The factual setting is simple. The white power structure of Richmond was fearful of losing control over city government because of the growth of black voting strength. They purposely compromised an annexation to quickly secure 45,000 new white citizens in time to dilute the black vote enough to maintain control. There were no other reasons for the compromised annexation.

The Appellant then knowingly failed to seek Section 5 approval. Appellee filed a 15th Amendment suit to challenge

their disenfranchisement. On appeal the 4th Circuit after first specifically excluding any Section 5 considerations, reversed the District Court. Appellees re-activated their separately filed Section 5 suit and sought to enjoin any further elections. This Court granted that injunction in April of 1972. Days before the motion for summary judgment was to be heard in that Section 5 suit appellant filed for approval in the court below in this action. The Section 5 local District Court stayed action on the motion for summary judgment pending a decision by the court below in this action. After the taking of extensive evidence, and its consideration, by a Special Master and the court below, appellants belated request for approval of its voting change was denied.

The Holt Appellees action in the local District Court to enjoin further enforcement of the annexation (now supported by the fact that the City had failed to win approval from the Court below) is still pending.

SUMMARY OF ARGUMENT

THE QUESTIONS ARE NOT SUBSTANTIAL

The Appellant's protestations to the contrary, the Questions raised on appeal are not substantial and do not demand plenary review.

The simple fact is that upon voluminous evidence reviewed by both a master and the three-judge court, the appellant failed utterly to meet its burden of proof under Section 5, relative not only as to the purpose and effect of the annexation but

also as to the purpose and effect of the annexation as modified by a word plan.

The reason no elections are being held is because the appellant has flouted the law by implementing the change without approval. This Court has had to enjoin appellant's attempts to hold elections until it has gained Section 5 approval. Now, having failed to gain approval they seek to use their own wrongdoing, i.e., implementation without approval, as a reason for review.

In fact, the "procedural morass" is a ploy still being employed by the Appellant to maintain illegal control of the City government.

In addressing itself to error in the record below it is interesting to note the total lack of argument by Appellant to any error in the factual findings of invidious purpose and effect. Complaint by appellant of an "extra burden" seems hollow indeed when Appellant actually failed to meet even the simplest of burdens.

Further, Appellant's complaint that the Court had no jurisdiction to de-annex is of no moment here because the lower Court did not order de-annexation.

Appellant claims that "legitimate annexations" can stand where dilution is "incidental" and then assigns as error consideration of the very facts which proved that this annexation was illegitimate in that its effects were not incidental but invidiously deliberate.

Finally, Appellant seeks to claim as res judicata a Fourth Circuit ruling which by its own terms specifically excluded any possible effect upon issues raised under Section 5 of the Voting Rights Act.

ARGUMENT

1. There is no merit to a request for review because failing to carry a burden of proof complicates Appellants' original wrongdoing.

As the District Court below noted in its opinion (J. S. 1c-12c, App 37b) there is currently pending in the District Court for the Eastern District of Virginia an action brought by appellees Holt, et al., seeking a summary judgment to prevent implementation of the change on the grounds that the compromised annexation in question was without effect for lack of prior approval by the Attorney General or the-District Court below sitting pursuant to 1973c. That Court has witheld judgment on the question pending approval being secured or denied appellants in the court below. Having failed to gain approval, the appellants have sought and secured a further continuance of any decision by that court. (Appendix A).

While appellant refers to itself thus as being "enmeshed in a procedural morass," any such morass is of its own making. Allen v. State Board of Elections, 393 U.S. 544, 567, eliminated beyond a doubt for all but the most disingenuous or quixotic that annexations were changes in voting practice or procedure within the meaning of §5 of The Voting Rights Act.

The anomalous situation in the instant case resulted solely because the appellant arrogantly ignored the Allen decision and instituted its compromised annexation without first seeking prior approval as required by the Act. The record of the Court below is replete with evidance that appellant instituted the compromised annexation for the very purpose of diluting (and thereby denying and abridging) the voting potential of its Black citizens (J. S. App. 10b-13b) and thereby achieved that prohibited effect (J. S. App. 14b, 19b, 23b-30b). In those thoroughly tainted circumstances, it is obvious that the appellant did not need either Allen, supra, or Perkins v. Matthews, 400 U.S. 379 to inform it that its instituted change in voting practice was in violation of §5.

Put simply, one cannot have gone about the business of instituting a change in voting practice for the purpose of diluting the Black vote and thereafter credibly maintain that it had been acting in ignorance of the requirements of §5. The anomalous situation presented to the Court by Appellant results from its own knowing, flagrant wrongdoing. Appellees Holt, et al respectfully suggest that the solemn jurisdiction of this Court should not be invoked simply because patent and flagrant wrongdoing by the appellant has resulted in a temporary anomaly.

2. The District Court properly concluded that the Appellant's belatedly adopted ward did not remove the dilution of Black voting power caused by the compromised annexation or demonstrate that it had abandoned its discriminatory purpose.

In Georgia v. United States, 411 U.S. 526, 531 (1973) this Court noted that §5 concerns itself "with the reality of changed practices as they effect Negro voters." The evidence suggested and the Master and Court below found "... there is significant and widespread voting by Blacks for Black candidates and by Whites for White candidates in the City of Richmond...." (J.S. App. 10c and 7c).

Even the appellant tacitly admits that its ward plan would leave the Black voters a maximum of four (4) of the City of Richmond's nine (9) councilmanic seats. While it is true that prior to the illegal institution of the covert, compromised annexation by appellant, Blacks constituted only 44% of the voting age as shown by a 1970 census, the percentage of Blacks in the total population was greater than the percentage of whites in the total population and would (as the court found), if indeed it has not already done so, in a few years translate itself into a voting-age majority (J.S. App. 23b-24b). Further, appellant's ward system guarantees a white-controlled City Council while there "... is good reason to think that Blacks would have a genuine opportunity to elect five councilmen

within Richmond's old boundaries than in a ward system operated within the [illegally] expanded boundaries." (J.S. App. 25b-26b).

Moreover, in passing upon both the purpose and effect of the appellant's belatedly adopted ward plan, the Court below could not ignore that another intervenor, The Crusade for Voters, in order to illustrate the appellant's mala fides, had conceived a ward plan that went much further than appellant's plan in preserving Black voting strength. (J.S. App. 29b-30b). The contrast between the relative effectiveness of these two plans, without more, warranted the finding of the Court below ". . . that the white political leadership presently in control of Richmond adopted the ward system for the purpose of doing what they could to maintain the dilution of the Black vote produced by annexation." (J.S. App. 26b-27b).

The invocation of the Petersburg annexation , City of Petersburg, Va. v. United States, D.C.D.C., 354 F. Supp. 1021, 1027 (1972), aff'd, 410 U. S. 962 (1973), by appellant is the legal equivalent of a sacrilege: the Petersburg annexation was favored by a substantial majority of its Black citizens (unlike the case here as evidenced by the positions of the Black intervenors, appellee's see appendex B) for objectively verifiable financial and geographic interests and was pursued without any purpose of diluting the Black vote. (J.S. App. 18b). Further, the district Court in Petersburg found that that city had "expanded into those areas which were most reasonably available and which were the most desirable for accomplishing the legitimate purposes of annexation." City of Petersburg, Va. supra 354F. Supp. at 1024.

By contrast, the court below found there are no demonstrable beneficial financial or geographic interests served by the instant compromised annexation. Its finding here was hardly surprising since the record discloses that in its secret, white-controlled compromise negotiations appellant concentrated solely on the

number of new white voters it desired to obtain to the exclusion of any legitimate considerations.

Further, the ward plan proposed by appellant as a remedy for its illegally implemented change in voting practice was drawn without reference to the racial living patterns in Richmond by an individual whose only direction from appellant was to "keep the wards within a four to five per cent variance from population equality." (J.S. App. 28b). Appellant's deliberately maintained ignorance of its racial living patterns in drawing its ward plan is most telling evidence of its utter lack of sincerity in attempting to correct the diluitive effect of the compromised annexation.

3. The Enunciation by the Court Below of Authority to Effect De-Annexation Raises No Justiciable Issue Since The Court Below Did Not In Fact Order De-Annexation

While the Court below correctly noted that there were compelling equities favoring de-annexation, it refrained for the time being from ordering that remedy and remanded the Holt appellees to the pending action in the United States District Court for the Eastern District of Virginia. Inasmuch as the district Court below did not order de-annexation, appellant's complaint thus raises no justiciable issue.

4. The District Court Acted Properly in Considering The Lack of Economic and Administrative Benefits of Appellant's Illegally Implemented Change in Voting Procedure.

The mandate of Section 5 is such that the Court below had to deny approval of the annexation when the appellant failed to prove it did not have the purpose and effect of abridging the black vote on account of race or color. Such a determination by its very nature necessitated a consideration of just what motives did exist.

When considered in conjunction with all the other evidence of invidious racial purpose, the absence of any compelling economic and administrative benefits for the compromised annexation was cogent evidence that this change in voting practice was implemented solely for the purpose of diluting black voting power. By the same token, had the appellant been able to demonstrate that there were compelling, or even attractive, economic and administrative benefits accuing from the illegally implemented change in voting procedure, it would have dispelled pro tanto the otherwise overwhelming evidence of prohibited and invidious racial purposes.

Thus, the lack of evidence of economic and administrative benefits for the annexation underscored and corroborated the other evidence in the case which "mandated" the finding that the appellant in the compromise negotiations had expressed no concern over any subject except the number of new white voters it could capture in order to dilute the black vote and maintain white control. While even a "good" annexation cannot make an impermissable voting change valid, the evidence that this annexation was "bad" from an economic and administrative point of view was highly relevant to the issue of the appellant's impermissible purpose.

In Petersburg, supra, (upon which appellant futilely relies elsewhere) careful consideration was given to the absence of any evidence that that particular annexation was undertaken for any but legitimate financial geographic, and administrative purposes. (J.S. App. 18b). That evidence went a long way toward convincing the Petersburg Court that no impermisible purpose existed for its annexation.

5. The Record Plainly Indicates That The Court Below Did Not "Ignore" The Attorney General's Approval of Richmond's 9-Ward Plan

There is no evidnece at all that the Court below ignored the approval given by the Attorney General to the appellant's 9-Ward plan.

However, as Allen v. State Board of Elections, 393 US 544 (1969) clearly envisioned, the Attorney General can be expected, from time to time, to be less than vigilant. The record before this Court indicates that the Attorney General's belated acquiesence to the City's proposed ward plan in spite of the overwhelming evidence of racial purpose, was a direct result of just such a lack of vigilance.

As the Court below recognized, it did not sit simply to rubber stamp the bad judgement of the Attorney General, but rather its responsibility was " . . . no less than to insure realization of the Fifteenth Amendment's promise of equal participation in our electoral process." (J.S. App. 46, Citing Allen v. State Board of Elections, supra Note 3, 393 U.S. at 556). Once the jurisdictional period has expired, the Attorney General's "approval", i.e., failure to object to the annexation, is without legal effect and can in no wise prevent an independent judicial scrutiny of the voting change. This is especially true where that voting change has been implemented prior to its consideration by the Attorney General or the District Court in blatant disregard of the clear requirements of Section 5.

6. Holt I Cannot Be Given Either Res Judicata or Collateral Estoppel Effect in this Case

The District Court in Holt I (Holt v. City of Richmond, E.D. Va., 324 F. Supp. 328 (1971), reversed, 4 Cir., 459 F. 2d 1093, cert. denied, 40 U.S. 931 (1972), made extensive

and thoroughly documented findings of fact that the annexation at issue was for the purpose of denying and abridging the right of blacks to vote on account of their race. Not a single finding of fact was overturned by the Court of appeals. The holding of that Court was simply, in its own words:

> "Facially constitutional legislation may not be stricken because of respect legislative motivation."

In other words, the Fourth Uircuit held that in a pure Fifteenth Amendment suit the motive of legislative acts (e.g., the pursuit of a Compromised annexation by appellant's City Council) was irrelevant. By contrast, however, in a suit of Section 5 of the Voting Rights Act the motive behind legislation affecting a change in voting procedure is the central issue. The Fourth Circuit itself recognized this point in stating:

> We have no jurisdiction to consider any problem arising under that [42 U.S.C. 1973C] Act.

As Judge Winter of that Court noted in his lucid dissent:

> The opinion of the majority may be read in vain for any adequate discussion of these findings and any demonstration that they are clearly erroneous. . . the majority simply takes the position that the evidence to support them is extraneous to the issue.

Thus neither the doctrine of collateral estoppel nor that of Res Judicata is germane to the instant case since the findings of fact by the district court were never successfully challenged and the legal issue as defined by the Fourth Circuit in Holt I was wholly different from that prescribed in a suit under Section 5 of the Voting Rights Act:

> For there to be an indentity of causes action within the meaning of the doctrine of Res Judicata, it has been held that the degree of proof required in the second action must be at least as great as that required to support recovery in the first action, and that if the degree of proof required in the first action is greater than that required in the second, the cause of action cannot be held to be the same. (Am Jur, Judgments, sec. 414, pp. 580-81).

In the initial Holt suit, the burden was upon Holt, et al., as plaintiffs, to prove their case by at least a preponderance of the evidence. Further, under its own interpretations of Fifteenth Amendment law, the Court of Appeals held that even proof of invidious legislative motive would not cause "facially constitutional" legislation to be stricken. While this motivation may have been irrelevant in the context of that Fifteenth Amendment case, it is highly relevant, and indeed The central issue, in the context of the present suit under Section 5 of the Voting Rights Act. "It is well established that a declaratory judgment action under Section 5, the plaintiff State [here the City of Richmond] has the burden of proof." Georgia v. United States, No. 72-75, p. 11 (May 7, 1973).

The United States Supreme Court in Allen spoke to the inadequacy of Fifteenth Amendment remedies in stating:

> "Of course the private litigant could bring suit under the Fifteenth Amendment. But it was the inadequacy of just these suits for securing the right to vote that prompted Congress to pass the Voting Rights Act." Allen v. State Board of Elections 393 U.S. 544, 556, footnote 22, quoting from South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966).

Thus, even under the most liberal application of the rules, the admittedly inferior and inadequate Fifteenth Amendment remedies cannot be res judicata to an additional remedy and suit under the Voting Rights Act.

7. Rulings Which Deal With "Incidental Voting Changes Resulting from Legitimate Annexations" Do Not Apply to this Case

Applicant's selfserving designation of this annexation as "legitimate and necessary governmental action" with resultant "incidental dilution" does not escape the propriety of the lower Court's finding to the contra.

This is a case of an illegitimate annexation resulting in deliberate invidious voting changes. Such a finding of fact

was "mandated" and appellant has consistently failed to point in the record below to any indication that such a finding was erroneous.

CONCLUSION

The Court below did not err in any respect in its construction of or application of Section 5 of the Voting Rights Act. The Appellant's arguments have pointed to extraneous issues, non-issues and phantoms, revealing only the paucity of merit in their complaint.

For the reasons stated above the present appeal should be dismissed or, in the alternative, the judgments of the District Court should be affirmed.

Respectfully submitted,

W.H.C. VENABLE
JOHN N. McCARTHY
Venable and McCarthy
Caskie House - 422 East Main Street
Richmond, Virginia 23219
Attorneys for Appellees

APPENDIX A

FILED
OCT 1 1974
CLERK, U. S. DIST. COURT
RICHMOND, VA.

Recd 10-2-74

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CURTIS HOLT, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 695-71-R
CITY OF RICHMOND, et als,	)	
	)	
Defendants.	)	

O R D E R

This September 12, 1974, came again the parties, by counsel, to argue the motionsof (a) the City of Richmond for a further stay of these proceedings until the Supreme Court of the United States has acted upon and made disposition of the petition for appeal to that Court filed by the City to the judgment order of a Three-Judge Court of the District Court for the District of Columbia Circuit, and (b) plaintiff for summary judgment. And thereupon came Crusade For Voters of Richmond, Virginia, by counsel, who on September 10th forwarded to this Court a petition to intervene, and moved the Court to permit such intervention. Upon mature consideration of the petition and motion, it is ORDERED that Crusade For Voters of Richmond, Virginia, are granted leave to appear amicus curiae, and leave is granted it to file a brief within 7 days from this date, which brief has now been filed.

On September 10th, Donald O. Sutton filed a

motion to intervene in this action, but failed to appear on September 12th to present the same to the Court. It is ORDERED that his motion is denied.

And the Court having heard argument on the above motions, and having ordered a transcript of the argument prepared, this cause is continued.

United States Circuit Judge

United States District Judge

United States District Judge

September 25, 1974.